

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CARLOS MASCARENAS,

Plaintiff,

v.

CIV NO. 1:15-cv-00248-CG

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

**ORDER AWARDING ATTORNEY FEES PURSUANT TO
THE EQUAL ACCESS TO JUSTICE ACT, 28 U.S.C. § 2412(d)**

THIS MATTER is before the Court upon Plaintiff Carlos Joseph Mascarenas' *Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, with Memorandum in Support*, (Doc. 32), filed September 19, 2016. Defendant, the Commissioner of the Social Security Administration, had fourteen days to respond to this Motion, but did not do so by October 4, 2016. D.N.M.LR-Civ. 7.4(a). Because the time to respond to this Motion has passed, and "[t]he failure of a party to file and serve a response in opposition to a [M]otion within the time prescribed for doing so constitutes consent to grant the [M]otion," the Court will assume that Defendant consents to Plaintiff's requested relief. D.N.M.LR-Civ. 7.1(b). Therefore, the Court being otherwise fully advised in the premises, **FINDS** that the Motion is well-taken and should be **GRANTED**.

IT IS THEREFORE ORDERED THAT Plaintiff's *Motion for Attorney Fees Pursuant to the Equal Access to Justice Act, with Memorandum in Support*, (Doc. 32),

be **GRANTED**, and Plaintiff be awarded \$5,779.80 in attorney fees¹ pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d). See *Astrue v. Ratliff*, 560 U.S. 586, 591–93 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED THAT if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'Carmen E. Garza', is written over a horizontal line.

THE HONORABLE CARMEN E. GARZA
UNITED STATES MAGISTRATE JUDGE.

¹ Costs are paid from the Judgment Fund, not from agency funds.